

LETTERS PATENT APPEAL No 435 of 95
in
Special Civil Application No 5366 of 95

Date of decision: 19/12/95

For Approval and Signature:

Hon'ble THE ACTG.C.J. RA MEHTA and
 MR.JUSTICE M.S.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements? : Yes
2. To be referred to the Reporter or not? :Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? : No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

STATE OF GUJARAT vs AHMEDABAD URBAN DEVELOPMENT AUTHORITY

Appearance: Mr. S.N. Shelat, Additional A.G.P., with Mr. Y.F. Mehta, ASST. GOVERNMENT PLEADER for appellants

Coram : THE ACTG.C.J. RA MEHTA and
 MR.JUSTICE M.S.SHAH

ORAL JUDGEMENT

The appellants [the State of Gujarat and the Inspector General of Prisons] are aggrieved by the ex-parte ad-interim order directing the authorities to hand over the possession of the lands within 15 days.

The original petitioners were owners of original plots No.177, 178 and 179. Under the final town planning scheme, which came into force in the year 1982, these plots vested in the Authorities and the petitioners were given other lands being plots No. 676, 677 and 678. However, for as many as 12 years, the petitioners were not given possession of these plots. The

possession of the original plots of the petitioners was taken long back and a new overbridge has already been constructed on the same.

Ultimately, the State Government has passed a resolution on 6th December 1994, Annexure "J" to the petition, directing that the petitioners be given possession of final plots No.676, 677 and 678 and the Inspector General of Prisons and the Municipal Authorities were directed to hand over the possession of the plots to the petitioners within one month. As this direction of the State Government was not complied with, the petitioners preferred Special Civil Application No. 5366 of 1995.

The learned Single Judge admitted the petition and granted ex-parte ad-interim relief in terms of paragraph 20(C) directing the authorities to hand over the possession of final plots No. 677 and 678 of Town Planning Scheme No. 28 and land admeasuring 1103 sq.mtrs, just adjoining the aforesaid final plots within a period of 15 days.

Being aggrieved by that order, the present appeal has been preferred.

The learned Additional Advocate General for the appellants is right when he submitted that the mandatory order of this nature should not have been granted ex-parte. However, we have now fully heard the matter biparte. The learned Additional Advocate General submits that granting of this relief would amount to allowing the petition and ought not to have been granted and ought not to be granted. Reliance is placed on the judgment of the Honourable Supreme Court in the case of Bank of Maharashtra vs. Race Shipping and Transport Co. Pvt. Ltd., reported in AIR 1995 Supreme Court 1368. In that case, the Supreme Court observed that the practice of granting interim order which practically gives the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations, is deprecated. That was the case where the Bank was alleged to have made payment on forged cheque and the High Court has passed interim order for reimbursement to the account holder. There was a dispute as to whether the cheque was forged or whether payment was correctly made following procedure for honouring cheque. In view of serious disputes, the Supreme Court held that it could not be said that prima facie case was made out by the account holder for reimbursement. It is to be noted that in this case it is not only the prima facie case which the petitioners have made out, but it is also not in dispute that the possession of the original plots of the petitioners had been taken by the Authorities under the town planning scheme in the

year 1982; it is also not in dispute that in the town planning scheme, final plots Nos. 676, 677 and 678 have been earmarked and allotted to the petitioners; it is also not in dispute that even after lapse of 12 years, the petitioners have not been given these lands or anything else. The Government Resolution of December 1994 is also very clear directing the authorities to hand over the possession of the said plots to the petitioners within one month. There is no legal answer to these pleas and facts put forward by the petitioners.

The learned Additional Advocate General has also referred to and relied upon the judgment of the Honourable Supreme Court in the case of Anup Engineering Limited vs. Shreenarayan Kanaiyalal, reported in 1995 (1) G.L.H. 345. In that judgment, the Supreme Court held that at the interlocutory stage the High Court ought not to have pronounced on question of law. In the present case, there is no question of deciding any question of law, because the facts are undisputed and there is no defence either on facts or in law.

The only contention raised by the appellants is that there is adjoining land of open jail and, therefore, from security angle, the jail administration has objection to these plots being allotted to any private party. As far as the principal central jail and its campus are concerned, they are far away and even open jail and central prison are separated by the overbridge road and that central prison is not in any way connected with these lands in question. In the land adjoining the disputed land, there is open jail. In this open jail, reformed prisoners including life convicts who have shown reformation and who may be trusted with some liberty, are kept. For all these years, this was not considered to be a reason for not allotting these lands to the petitioners. Even now there is no variation of the town planning scheme nor is there any acquisition of lands under the Land Acquisition Act. Therefore, as on today, the appellants have no right to retain these lands. Injustice to the petitioners spread over more than 12 years is eloquent with gross delay, and the inaction on the part of the Authorities is also deplorable.

Moreover, the learned counsel for the original petitioners submitted that the petitioners undertake that they will not deal with or dispose of these lands or part with the possession of the lands in any manner and that they will not put up any construction on the same for a period of one year, so that if the Government can take any legal action for acquiring these lands, the Government is not prejudiced, and in the event of court directing the petitioners to return the possession, they shall be in a position to do so subject to their right to challenge such a decision.

In view of these clear and undisputed facts and the long

injustice suffered by the petitioners, the ad-interim order passed by the learned Single Judge does not call for any interference, especially in view of the undertaking given by the original petitioners.

In the result, the appeal is dismissed with no order as to costs. The original petitioners to file an undertaking and serve a copy on the learned Additional Advocate General for the appellants. The appellants are directed to hand over the possession of the lands to the original petitioners within one month from the date on which the undertaking is filed in the court.

THE ACTG.C.J. RA MEHTA

(M.S. Shah, J.)